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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,876	06/25/2003	Paul Goode	13569.0012US01	3012

21186 7590 06/09/2006

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EXAMINER

FAULCON JR, LENWOOD

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/603,876

Applicant(s)

GOODE, PAUL

Examiner

Lenwood Faulcon, Jr.

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

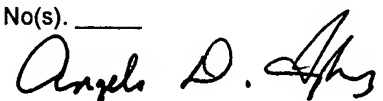
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3,5,7,8,10-15,17-27,29-44 and 46-49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



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Continuation of 11. does NOT place the application in condition for allowance because: Examiner maintains the rejections as set forth in the previous Office Action of March 22, 2006.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, particularly in regards to claims 1 and 3, 8-15 and 17-23, Examiner takes the position that Levine et al. teaches of a system for predicting sudden cardiac death comprising determining intra-cardiac impedance data (see for example col. 5 lines 17-26), generating trend data based on derived physiologic cardiac parameters and predicting the onset of a sudden cardiac death episode (see for example col. 5 lines 5-16). Examiner also takes the position that the Chirife reference teaches that it is well known in the art that ejection fraction is a well known cardiac parameter derived from intra-cardiac impedance measurements and can be indicative of sudden cardiac death (see for example col. 3 lines 48-57). Levine et al. and Chirife both teach of cardiac assist devices that act to prevent sudden death by sensing physiologic cardiac parameters. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings of Levine et al. and Chirife to have a system for determining intra-cardiac impedance and further trending the ejection fraction for the purpose of predicting the sudden cardiac death.

In regards to claims 29 and 43, Examiner interprets Applicant's arguments to be a typographical error, and should actually be addressing claims 30 and 31, regarding monitoring a drug regimen and detecting the occurrence of a myocardial infarction. Further, Applicant asserts Examiner has not previously addressed the limitations of these claims; however, Examiner disagrees, and maintains the position that Levine et al teaches of detecting myocardial infarction (see for example col. 33 lines 13-21) and it would have been an obvious modification to one having ordinary skill in the art at the time of the invention to include monitoring of a drug regimen (see previous Office Action of March 22, 2006, page 3 lines 9-18).

In regards to claims 5 and 7, Examiner maintains the position that the system as taught by Levine et al. is inherently capable of detecting intra-cardiac impedance when the patient is at rest or when the patient is not at rest. Examiner takes the position that even if the Levine et al. reference is discussing resting and non-resting states in the context of electrical events, the system is still capable of monitoring intra-cardiac impedance during such states. Further, Applicant's claim 5 is merely claiming the ability to measure intra-cardiac impedance during a time in which the patient is at rest or is not at rest.

In regards to claims 24-27, 30-42, 44 and 46-49, Examiner maintains the position that the Levine et al. reference teaches that physiologic cardiac parameters can be derived from intra-cardiac impedance (see for example col. 28 lines 38-51)

Further, Examiner interprets Applicant's referral to a 1449 Form submitted on November 21, 2003, to be a typographical error and actually meant to be referring to a 1449 Form submitted on November 24, 2003, which Examiner has previously considered in the previous Office Action of September 22, 2005..